IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2006

Coram

The Hon□ble Mr. A.P.SHAH, Chief Justice
and
The Hon□ble Mr. Justice K.CHANDRU

W.A.Nos.1280, 1400, 1401, 1423 and 1424 of 2006
and
M.P.Nos.2 to 5 of 2006 in W.A.No.1280 of 2006
M.P.Nos.1 & 2 of 2006 in W.A.No.1400 of 2006
M.P.Nos.1& 2 of 2006 in W.A.No.1401 of 2006
M.P.Nos.2 to 4 of 2006 in W.A.No.1423 of 2006
M.P.Nos.2 to 4 of 2006 in W.A.No.1424 of 2006

W.A.No.1280 of 2006

1. M/s.Shanmuga Wines,
rep. by its Partner S.MuthuRaj,
3, Main Road,
Kottucherri,
Karaikkal.

2. U.S.S.Syed Ibrahim

3. B.Thirumalai Rajan ..Appellants

Vs.

1. V.Gandhimathi
2. The Deputy Commissioner (Excise),
Karaikal, Pondicherry.

3. L.Mohamed Mansoor ..Respondents

W.A.Nos.1400 & 1401 of 2006

1. U.S.S.Syed Ibrahim
2. B.Thirumalai Rajan ..Appellants in both the Appeals

Vs.

1. V.Gandhimathi
2. The Excise Commissioner (Excise),
Karaikal, Pondicherry.
3. The Deputy Commissioner (Excise),
Karaikal, Pondicherry. ..Respondents in W.A.No.1400/06

1. V.Gandhimathi
2. The Excise Commissioner (Excise),
Karaikal, Pondicherry.
3. The Deputy Commissioner (Excise),
Karaikal, Pondicherry.
4. L.Mohamed Mansoor ..Respondents in W.A.No.1401/06

W.A.Nos.1423 & 1424 of 2006

M/s.Shanmuga Wines,
Rep. by its Partner S.Muthu Raj,
3, Main Road,
Kottucheri, Karaikal. ..Appellant in both the Appeals.

Vs.

1. V.Gandhimathi
2. The Excise Commissioner (Excise),
Karaikal, Pondicherry.
3. The Deputy Commissioner (Excise),
Karaikal, Pondicherry.
4. U.S.S.Syed Ibrahim
5. B.Thirumalai Rajan ..Respondents in W.A.No.1423/06

1. V.Gandhimathi
2. The Excise Commissioner (Excise),
Karaikal, Pondicherry.
3. The Deputy Commissioner (Excise),
Karaikal, Pondicherry. ..Respondents in W.A.No.1424/06

Prayer in W.A.No.1280 of 2006: Writ Appeal filed against the order dated 06.09.2006 passed by this Court in W.P.No.30979 of 2006.

Prayer in W.A.No.1400 of 2006: Writ Appeal filed against the order dated 19.08.2006 passed by this

Court in W.P.No.22114 of 2006.

Prayer in W.A.No.1401of 2006: Writ Appeal filed against the order dated 19.08.2006 passed by this Court in W.P.No.14883 of 2006.

Prayer in W.A.No.1423 of 2006: Writ Appeal filed against the order dated 19.08.2006 passed by this Court in W.P.No.22114 of 2006.

Prayer in W.A.No.1424 of 2006: Writ Appeal filed against the order dated 19.08.2006 passed by this Court in W.P.No.14883 of 2006.

For Appellants in W.A.1280/06 :: Mr.T.R.Rajagopalan, Senior Counsel
For Mr.N.Kiruphakaran

For Appellants in W.A.Nos.1400, :: Mr.Arvind P.Datar, Senior Counsel
1401,1423 & 1424/06 For Mr.T.M.Pappiah

For Respondent 1 in
all the W.As. :: Mr.K.M.Vijayan, Senior Counsel
For M/s.La Law

For R2 & R3 in all the W.As. :: Mr.K.K.Saseedharan,
Addl. G.P. (Pondy)

COMMON JUDGMENT

(The Judgment of the Court was delivered by the Hon□ble The Chief Justice)

Writ Appeal No.1280 of 2006 is directed against the order dated 06.09.2006 passed by the learned single Judge in Writ Petition No.30979 of 2006, whereas Writ Appeal Nos.1400, 1401, 1423 & 1424 of 2006 are directed against the order dated 19.08.2006 passed by the learned single Judge in Writ Petition Nos.14883 and 22114 of 2006.

2. Since common questions of law and fact are involved in these writ appeals, they are being disposed of by this common order.

3. The dispute between the parties relates to the liquor business carried on in the name of M/s.Shamuga Wines at Karaikal, Pondicherry. The case of the appellant, in brief, is that the first respondent/V.G.Gandhimathi had a licence in her name. She along with five other constituted a partnership firm in the name of M/s.Shanmuga Wines. A deed of partnership was executed on 01.04.1984. Clause 18 of the partnership deed expressly states that the licence will be the property of the firm. M/s.Shanmuga wines was registered on 04.12.1985. The firm was reconstituted on 07.01.1989 with admission/retirement of certain partners. Clause □ 20 of the reconstituted partnership deed reads that the licence standing in the name of V.G.Gandhimathi will be the

property of the firm. Thus, when the licence is shown to be the property of the firm, the first respondent cannot claim exclusive right to the licence. On the other hand, the case of the first respondent is that the licence stood in her name, and hence irrespective of the claim based on the partnership, for the purpose of Licensing Authority, she alone is the licence holder and entitled to run the business to the exclusion of other partners, who are claiming rights on the basis of the alleged partnership deed.

4. The dispute between the parties started when the 2nd respondent permitted the shifting of the shop from the existing licensed premises to a different place. The first respondent filed Writ Petition No.14883 of 2006 seeking to restrain the Licensing Authority from in any manner permitting the shifting of the existing liquor shop standing in her name to any other place without her consent and permission. It appears that pending W.P.No.14883 of 2006, shifting of the liquor shop was permitted. Therefore, the 1st respondent filed W.P.No.22114 of 2006 restraining the Licensing Authority from in any manner permitting respondents 3 and 4 therein to run the liquor shop without the consent of the 1st respondent. A learned single Judge of this Court by order dated 19.08.2006 disposed of W.P.Nos.14883 of 2006 and 22114 of 2006 by quashing the order passed for shifting the liquor shop. The learned single Judge directed that the business of M/s.Shanmuga Wines will be conducted in the new premises only after the petitioner therein (1st respondent herein) is heard and thereafter, the Licensing Authority is satisfied that there has been proper application as per the Rules and Regulations. The learned single Judge further observed in paragraph 26 of the order that the dispute regarding partnership firm and the rights and liabilities of the partners in the said partnership firm shall be resolved in an appropriate forum.

5. While the application for transfer of the licensed premises is still pending before the second respondent the Licensing Authority granted permission to the managing partners for moving the goods vide order dated 01.09.2006. The 1st respondent field Writ Petition No.30979 of 2006 challenging the permission granted by the Licensing Authority. By the time, the writ petition was taken up; the Licensing Authority withdrew the impugned order dated 01.09.2006. The learned single Judge disposed of the writ petition vide order dated 06.09.2006, which reads as follows:-
ORDER
This writ petition was filed to quash the impugned order dated 01.09.2006 which reads as follows:-
As per the verdict of the High Court of Judicature at Madras, you are hereby permitted to run the business M/s.Shanmuga Wines in the old premises at Kottuchery. Regarding the issue of permit for transportation of intoxicants, applications should be submitted by the Managing Partners of the firm in accordance with the Partnership Deed.
2. On 05.09.2006, Mr.Murugesan, learned Senior Counsel, appearing for the respondent submitted that if it is posted today, he will get instructions from the respondent.
3. It is informed today that the order has been withdrawn and a xerox copy of the same, which is extracted below, is produced before the Court by the learned Government Pleader for Pondicherry.

GOVERNMENT OF PONDICHERRY
OFFICE OF THE DEPUTY COMMISSIONER (EXCISE)
No.6484/DCE/C2/2006-2007 Karaikal,

The 05.09.2006
MEMORANDUM

Sub: Excise Shifting of business premises of
M/s.Shanmuga Wines, Karaikal Reg.

Ref: This Office Memorandum of Even No. dated 01.09.2006.

An order issued vide Memorandum cited is hereby withdrawn.

Sd/-
(L.MOHAMED MANSOOR)
Deputy Commissioner (Excise)

To

M/s.Shanmuga Wines,
Karaikal.

Pl.handover to Govt. Pleader of Pondicherry

4. No further orders are necessary. We are sure that the petitioner who is the licensee for running the business of Shanmuga Wines in the old premises at Kottucherri will be entitled to the issuance of permit which is a natural consequence of her being the holder of the licence. The writ petition is closed. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is also closed. (emphasis supplied)

6. Learned counsel appearing for the appellants took strong exception to the underlined observations made by the learned single Judge in the order dated 06.09.2006 made in W.P.No.30979 of 2006. Learned counsel contended that when the impugned order was withdrawn, there was no occasion for the learned single Judge to hold that the petitioner (1st respondent herein) will be entitled to the issuance of permit as a natural corollary of she being the holder of the licence. According to the learned counsel when the licence has become a property of the partnership firm no individual partner has a right to claim the business to the exclusion of other partners. In any event, according to the learned counsel the issue of ownership of licence can be decided by the Licensing Authority. In reply, learned counsel appearing for the 1st respondent contended that the licence exclusively belongs to the 1st respondent. He contended that only the first respondent has a right to carry on the business. He, however, fairly conceded that the issue as to whether the 1st respondent is a licensee or any other person is also a licensee along with the 1st respondent, is required to be decided by the Licensing Authority.

7. The only issue that needs to be addressed is as to who is the holder of licence bearing No.4/FL-I. Both the parties have conceded that this issue will have to be decided by the competent authority. By consent of the parties, the Deputy Commissioner of Excise, Karaikal, Pondicherry is directed to find out as to who is the holder of licence bearing No.4/FL-I i.e., whether the 1st respondent is the exclusive licensee under the said licence or the partnership firm is the licensee. The Commissioner shall also decide as to whether permission can be granted to shift the business from the existing premises or not. It is needless to say that the Commissioner shall decide these questions untrammeled by the observations made by the learned single Judge in the orders dated 19.08.2006 and 04.09.2006 passed in W.P.Nos.14883, 22114 of 2006 and 30979 of 2006 respectively. It is expressly made clear that all questions on merits are left open to the parties. The parties are directed to appear before the Commissioner on 12.12.2006. On such appearance, the Commissioner shall afford an opportunity of hearing both the parties; allow them to adduce evidence in support of their respective cases and then pass appropriate orders within a period of six weeks thereafter. All the writ appeals are disposed of accordingly. Consequently, connected miscellaneous petitions are closed.

Vsl/pv

Copy to:-

1. The Excise Commissioner (Excise),
Karaikal, Pondicherry.

2. The Deputy Commissioner (Excise),
Karaikal, Pondicherry.